

ORIGINAL

AUGUST 2024

END USER LICENSE AGREEMENT

Duly Executed Original Agreement

*This is the original END USER LICENSE AGREEMENT
between Licensee and Licensor, duly executed and
including a Table of Contents for quick reference.*

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END USER LICENSE AGREEMENT

This END USER LICENSE AGREEMENT (the "**Agreement**") is made and entered into as of the date set forth in the signature block (the "**Effective Date**"), by and between JMS Analytics LLC, a Minnesota limited liability company (the "**Licensor**"), and the party set forth in the signature block (the "**Licensee**"). Licensee and Licensor may be referred to in this Agreement collectively as "**Parties**" or individually as a "**Party**".

RECTIALS

- A. Licensor holds all right, title and interest in certain proprietary software and related documentation, the Licensed Product (as hereinafter defined); and
- B. Licensee wishes to license the Licensed Product (as hereinafter defined), and Licensor wishes to grant such license to Licensee pursuant to the terms and conditions set forth in the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the mutual promises set forth herein, Licensor and Licensee agree as follows:

SECTION 1: DEFINITIONS

Whenever used in this Agreement, the capitalized terms quoted below will have the meaning ascribed to them in this Section.

- 1.01 "Agreement" has the meaning set forth in the preamble of this Agreement.
- 1.02 "Annual License" has the meaning set forth in Section 2.02 of this Agreement.
- 1.03 "Business Days" has the meaning set forth in section 4.01 of this Agreement.
- 1.04 "Business Hours" has the meaning set forth in section 4.01 of this Agreement.
- 1.05 "Confidential Information" has the meaning set forth in section 9.01 of this Agreement.
- 1.06 "Copy" or "Copies" means the Licensed Product (including the components thereof), any Releases, Error Correction, or Enhancement pertaining thereto, and any reproductions of the Licensed Product or any Release, Error Correction, or Enhancement pertaining thereto.
- 1.07 "Enhancement" means a modification of the Licensed Software by Licensor which provides (a) a capability not defined in the Product Specifications or (b) an improvement in the efficiency of the Licensed Software. Licensor may designate an Enhancement as "Major" or "Minor" depending on (a) Licensor's commercially reasonable assessment of the Enhancement's value and (b) whether the

Enhancement adds a functional extension to the preexisting Licensed Software. An Enhancement may entail a modification to the Product Specifications.

- 1.08 "Error" means a failure of the Licensed Software to substantially conform to the Product Specifications. Provided, however, any nonconformity resulting from Licensee's improper use of the Licensed Software, combining or merging the Licensed Software with software not approved by Licensor for use with the Licensed Software, or modification of the Licensed Software which has not been performed by Licensor shall not be considered an Error.
- 1.09 "Error Correction" means a modification of the Licensed Software by Licensor which corrects Errors discovered in the Licensed Software and enables the Licensed Software to conform to the Product Specifications.
- 1.10 "Full License" has the meaning set forth in section 2.01 of this Agreement.
- 1.11 "Intellectual Property Rights" means all proprietary information, patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs, processes, inventions, licenses, copyrights, know-how and trade secrets of either Party, including, but not limited to, such rights relating to the origin, design, manufacture, programming, operations, function, configuration, or service of the Licensed Product.
- 1.12 "License Fees" means those amounts specified and set forth in section 3 of this Agreement.
- 1.13 "Licensed Documentation" means all technical, repair, marketing and user documentation for the License Software and any succeeding changes thereto, including, without limitation, all specifications as set forth in Licensor's product manuals; installation, maintenance, operating and customer manuals, instructions and diagnostics; system administrative materials; patch notes; configuration guides; marketing and sales brochures and literature; and product guides.
- 1.14 "Licensed Product" means collectively the Licensed Software and Licensed Documentation.
- 1.15 "Licensed Software" means the QM Setup Tool software, all Error Corrections, Enhancements, and Releases thereof supplied by Licensor during the term of this Agreement, and all permitted copies of the foregoing.
- 1.16 "Major Enhancement" means a version of the Licensed Software which contains new features or substantially improved functions from those contained in the Original.
- 1.17 "Non-Compatible License" has the meaning set forth in section 2.05 of this Agreement.
- 1.18 "Operators" means the individual user(s) permitted to access and use of the Licensed Product under the associated license.

- 1.19 "Original" means the first edition of the Licensed Product delivered by Licensor to Licensee pursuant to this Agreement.
- 1.20 "Policy Violation List" has the meaning set forth in section 2.07 of this Agreement.
- 1.21 "Product Specifications" means the performance functions of the Licensed Software, as specifically set forth in the Licensed Documentation.
- 1.22 "Release" or "Releases" means the edition(s) of the Licensed Software subsequent to the Original Licensed Product. A Release may include Licensed Documentation provided by Licensor for Error Correction or Enhancement.
- 1.23 "Term" has the meaning set forth in section 8.01 of this Agreement.
- 1.24 "Third-Party Services" has the meaning set forth in section 2.06 of this Agreement.
- 1.25 Words in the singular shall include the plural and vice versa.
- 1.26 A reference to one gender shall include a reference to the other genders.
- 1.27 A reference to writing or written includes e-mail.
- 1.28 Any obligation in this Agreement on a Party not to do something includes an obligation not to agree or allow that thing to be done.
- 1.29 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.30 References to sections or clauses are to the sections or clauses of this Agreement.

SECTION 2: LICENSE

2.01 Grant of License, Full

- (a) A license grant under this section 2.01 is applicable only to licenses purchased pursuant to section 3.01(a), by Licensee (a "**Full License**").
- (b) Licensor grants to Licensee and Licensee accepts a nonexclusive and nontransferable license to use the Licensed Product worldwide.
- (c) Licensee may not:
- (i) engage in any activity that violates any applicable law or regulation;
 - (ii) rent or sublicense the Licensed Product; or

- (iii) permit use of the Licensed Product by a person who is not an Operator;
- (d) Only one Operator can use the Licensed Software and the Licensed Software may only be used in the manner described in this Agreement, during the term of this Agreement.
- (e) Licensor reserves all ownership and other rights in the Licensed Product and, except for the rights granted in this Agreement, does not convey any other interest in the Licensed Product to Licensee.

2.02 **Grant of License, Annual**

- (a) A license grant under this section 2.02 is applicable only to licenses purchased pursuant to section 3.01(b), by Licensee (a “**Annual License**”).
- (b) Licensor grants to Licensee and Licensee accepts a nonexclusive and nontransferable license to use the Licensed Product worldwide.
- (c) Licensee may not:
 - (i) engage in any activity that violates any applicable law or regulation;
 - (ii) rent or sublicense the Licensed Product; or
 - (iii) permit use of the Licensed Product by a person who is not an Operator;
- (d) Only one Operator can use the Licensed Software and the Licensed Software may only be used in the manner described in this Agreement, during the term of this Agreement.
- (e) Licensor reserves all ownership and other rights in the Licensed Product and, except for the rights granted in this Agreement, does not convey any other interest in the Licensed Product to Licensee.

2.03 **Delivery of Software**

- (a) Licensor shall deliver the Licensed Product to Licensee by any method agreed upon by the Parties.
- (b) Licensed Software Activation Codes for License
 - (i) Upon purchase, the Licensee will receive a one-time use activation code via email.
 - (ii) Use of the activation code will require the Licensed Software to connect to the Licensor's online registration system to activate and register the Licensed Software.

- (iii) Licensee may request a new activation code at any time in case of loss or necessity for reinstallation, provided the Licensee is in good standing and not on the Policy Violation List (as defined below).
- (iv) Upon receiving a request for a new activation code from Licensee, Licensor shall provide Licensee an activation code within three (3) days of receipt of the request.

2.04 **Ownership**

Licensor retains title to the Licensed Software (both as recorded on the original media and on any subsequent media), the Licensed Documentation, and any Copies thereof in any form. This Agreement is a license to use, and not a contract of sale for, the Licensed Product. All Intellectual Property Rights in and to the Licensed Product are retained by Licensor. Licensee shall not use either the name of Licensor or the name of the Licensed Product licensed under this Agreement for any commercial purpose or in any advertising, promotional or public statement without the prior, written consent of Licensor.

2.05 **Non-Compatible Licenses**

Licensee may not combine, distribute, or otherwise use the Licensed Software with any code or other content which is covered by a license that would directly or indirectly require that all or part of the Licensed Software be governed under any terms other than those of this Agreement (the “**Non-Compatible License**”).

2.06 **Telecommunications and Internet Services**

In the instances where the Licensed Software requires internet access and use of third-party infrastructure (such as Azure hosting services), Licensor shall use reasonable efforts consistent with prevailing industry standards to maintain services in a manner which minimizes errors and interruptions. Licensee acknowledges that the use of Licensed Software by Licensee may at times (such as during activation, as set forth in section 2.03) be dependent upon access to telecommunications, internet services and Licensor's cloud provider (the “**Third-Party Services**”) and that there is no guarantee that these Third-Party Services will always operate uninterrupted or error free. Licensee acknowledges that failure in these Third-Party Services is beyond Licensor's control and Licensor shall not be liable to Licensee for any service disruptions related to the Third-Party Services.

2.07 **Use Compliance**

- (a) Licensor will monitor the Licensee's use of the Licensed Software to ensure compliance with this Agreement. To accomplish this, each time the Licensed Software is opened, it will automatically connect to Licensor's servers to verify the validity of the license.
- (b) In the event of evidence of misuse or breach of this Agreement by the Licensee, including but not limited to, unauthorized sharing, copying, or

modifying the Licensed Software, the Licensor reserves the right to terminate the license granted herein.

- (c) Upon determination of misuse, the Licensee will be added to a restricted list (the "**Policy Violation List**"). Any attempt to start the Licensed Software by a Licensee on the Policy Violation List will result in denial of access and use of the Licensed Software.

2.08 Data Collection

- (a) All data entered by Licensee into the Licensed Software shall remain stored locally on Licensee's device. Licensor shall not remotely access, retrieve, or store any locally entered data, ensuring the privacy and confidentiality of Licensee's data.
- (b) Upon purchase of the Licensed Software, Licensee will be provided with a registration code for the purpose of activating the Licensed Software license. Licensor will track license activations and associated information through a secure online system.
- (c) The following information will be collected and securely stored by Licensor for the purpose of license management, support, and compliance:
 - (i) The email address provided by Licensee at the time of purchase or registration;
 - (ii) The identification information of the device on which the Licensed Software is activated;
 - (iii) The full name of Licensee as provided during the purchase or registration process;
 - (iv) Other information collected at the time of purchase, including but not limited to:
 - i. Billing and shipping addresses;
 - ii. Phone number; and
 - iii. Payment method details and transaction-related information such as transaction IDs and dates. No credit card numbers will be stored.
 - (v) Records of each activation of the Licensed Software license; and
 - (vi) Information related to periodic license verification checks.
- (d) The collection of this information is for the purposes of facilitating the activation, reactivation, and ongoing verification of the Licensed Software

license, as well as for providing customer support and ensuring compliance with this Agreement.

- (e) Licensor commits to maintaining the confidentiality and security of the collected data in accordance with applicable data protection laws and regulations. Licensor will implement appropriate technical and organizational measures to secure the data against unauthorized or unlawful processing and against accidental loss, destruction, or damage.
- (f) Licensee shall have the right to access, modify, or correct their personal information held by the Licensor upon reasonable request.
- (g) Licensor reserves the right to modify this data collection clause, which shall be communicated through the Licensor's website located at: <https://www.qmsetup.com> .

SECTION 3: FEES

3.01 License Fees

(a) License Fees – Full License

As compensation for the Full License set forth in section 2.01, Licensee shall pay Licensor according to the fee schedule published on the Licensor's official company website at the time of purchase of the Licensed Product.

(b) License Fees – Annual License

As compensation for the Annual License set forth in section 2.02, Licensee shall pay Licensor according to the fee schedule published on the Licensor's official company website at the time of purchase of the Licensed Product.

3.02 Payment

All License Fees shall be due and payable in full in U.S. currency upon Licensee's execution of this Agreement.

3.03 Taxes and Other Charges

All fees set forth in this Agreement are exclusive of media charges, shipping, handling, custom charges, and all state, local, and other taxes, or other taxes or charges (other than income or franchise taxes payable by Licensor) directly applicable to the licensing, installation, support or use of the Licensed Products. Licensee shall pay all charges or taxes or provide Licensor with an appropriate certificate of exemption within thirty (30) days of the date of any invoice or statement of Licensor or the taxing authorities. If Licensee elects to challenge the applicability of any tax or charge, Licensee shall pay the tax or charge to Licensor or give Licensor evidence of payment to the taxing authorities or

charging entity, and Licensee may thereafter challenge such tax or charge and seek a refund.

3.04 **All Payments Final**

Except to the extent required by law, all payments and fees are non-refundable under all circumstances.

SECTION 4: SUPPORT

4.01 **Technical Support**

During the term of this Agreement, Licensor has the following support obligations with respect to the Licensed Product:

- (a) Email Support as follows:
 - (i) Licensor shall provide email support for holders of a Full License or Annual License;
 - (ii) For a Full License, Licensor shall provide email support for the Licensed Software until the end of the Licensed Software's life, which shall be a duration of five (5) years from the release date of the Licensed Software version purchased by Licensee. Licensee acknowledges that the support period will vary depending on the timing of the purchase relative to the Licensed Software's lifecycle. Details of the release date and end of life can be found on the support page of Licensor's official company website.
 - (iii) For an Annual License, Licensor shall provide email support for the Licensed Software for a period of three hundred sixty-five (365) days from the Effective Date.
 - (iv) In the event Licensee requires support, Licensee must first contact Licensor through the designated email address provided on Licensor's website located at: <https://www.qmsetup.com> ;
 - (v) Licensor retains the discretion to determine the appropriate form of assistance on a case-by-case basis. This may include, but is not limited to, continued email support, telephonic assistance, or directing Licensee to online resources;
 - (vi) Licensor's obligation to provide support shall be limited to issues directly related to the functionality and use of the Licensed Software as intended. Support does not include services for software modification, customization, or any issues arising from the misuse of the Licensed Software;
 - (vii) While Licensor will endeavor to resolve any issues submitted by Licensee, there is no guarantee that all problems will be solvable.

The determination of the viability of support and resolution shall be at the sole discretion of Licensor;

- (viii) Licensor reserves the right to modify the terms of this support clause with prior notice to Licensee, which shall be communicated through the Licensor's website located at:
<https://www.qmsetup.com> ;
- (ix) Email support shall only be provided Monday through Friday (the “**Business Days**”), from the hours of 8:00 A.M. through 4:00 P.M. CST (the “**Business Hours**”); and
- (x) Email support shall not be provided on national holidays recognized in the United States.
- (xi) After the end of the Licensed Software's life, as specified in Section 4.01(a)(ii), Licensor reserves the right to terminate all support and related services, including cloud services necessary for the operation of the Licensed Software. Licensee acknowledges and agrees that the Licensed Software may cease to function upon such termination, and Licensor shall not be liable for any loss of functionality or data following the end of life.

4.02 **Software Maintenance**

(a) **Error Correction and Enhancement Releases**

- (i) Licensor shall have no obligation to provide Error Correction Releases, Minor Enhancement Releases, or Major Enhancement Releases.
- (ii) Error Correction Releases, Minor Enhancement Releases, and Major Enhancement Releases, if any, will be made available at no charge to holders of a Full License.
- (iii) Error Correction and Enhancement Releases are the property of Licensor. Error Correction and Enhancement Releases are licensed to Licensee subject to the terms and conditions of this Agreement and, upon release, become a part of the Licensed Product. Each Release shall provide documentation informing Licensee of the Error Correction or Enhancement, including any significant operational differences known to Licensor.
- (iv) Licensee shall be responsible for the installation of all Error Correction or Enhancement Releases.

4.03 **Licensed Software Installation**

Licensee acknowledges that Licensee is solely responsible for the installation of the Licensed Software. Licensee further acknowledges that after the end of the

Licensed Software's life, as specified in Section 4.01(a)(ii), Licensor may terminate any cloud services required for the Licensed Software to operate, which may result in the Licensed Software ceasing to function.

SECTION 5: REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of Licensor

Licensor hereby represents and warrants to Licensee that (i) Licensor has the power and authority to enter into and perform the obligations according to the terms of this Agreement and to grant all rights contemplated by this Agreement; (ii) Licensor has no restrictions that would impair its ability to perform its obligations under the Agreement and has not and will not enter into any agreement that would prevent it from performing or would violate any of obligations hereunder; (iii) Licensor is the author and creator of the Licensed Product or has obtained and currently holds valid and sufficient rights, including the rights under all patents, trademarks, trade names, inventions, copyrights, know-how, trade secrets, and other third party proprietary rights, to license the rights granted to Licensee herein; (iv) the Licensed Product does not and shall not infringe upon, violate, or constitute misappropriation of any copyright, trademark, trade secret, right of publicity, right of privacy, moral rights, or any other proprietary rights of any third party, and no third party patent rights, trademark rights, or other intellectual property rights that would be infringed by any act contemplated by this Agreement; (v) no claims, allegations, or notifications from any third party, or any entity from which Licensor has obtained rights, have been made that the Licensed Product violates or infringes any copyright, trade secret, patent, trademark, or any other intellectual property right of any third party; (vi) the Licensed Product and the distribution thereof shall comply with all applicable federal, state, and local laws and regulations; (vii) the Licensed Software will perform in all material respects to the Product Specifications, (viii) the Licensed Software does not contain any viruses or other computer programming routines or defects that are intended to damage, detrimentally interfere with or expropriate any system, data, or information; (ix) the Licensed Product shall be free and clear of all liens, encumbrances, and claims or demands of third parties and in all material respects, free from defects, errors, and malfunctions; and (x) Licensor has the facilities, experience and expertise necessary to perform all of the services provided for in this Agreement, and shall perform the services in accordance with the highest professional and industry standards and this Agreement, in timely manner using qualified personnel.

5.02 Representation and Warranties of Licensee

Licensee hereby represents and warrants to Licensor that (i) Licensee has the full right and power to enter into and perform the obligations according to the terms of this Agreement; and (ii) Licensee currently has no restrictions that would impair its ability to perform its obligations under this Agreement.

5.03 **Notification of Defects**

Licensee shall notify Licensor of any material defect Licensee believes exists in the Licensed Product, and Licensee shall provide to Licensor all information known or reasonably available to Licensee regarding the alleged defect.

5.04 **Third Party Material**

With respect to all data and hardware not provided by Licensor and to be used or reproduced during Licensee's use of the Licensed Software, Licensee represents that it has all necessary rights to use or reproduce the data and that no use of the Licensed Software in connection therewith shall be made that causes an infringement of the right of any third party.

SECTION 6: WARRANTY

6.01 **Limited Warranty**

- (a) EXCEPT AS SET OUT IN THIS AGREEMENT, LICENSOR MAKES NO OTHER WARRANTIES OR REPRESENTATIONS RELATING TO THE LICENSED SOFTWARE OR ITS PERFORMANCE OR WITH RESPECT TO THE LICENSED DOCUMENTATION. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARE EXPRESSLY DISCLAIMED AND EXCLUDED.
- (b) Licensor will not have any warranty obligations with respect to any problems resulting from: (a) improper installation of the Licensed Software by Licensee or installation by Licensee of the Licensed Software on improper hardware; (b) modification of the Licensed Software not undertaken or performed by Licensor; (c) malfunctions in any computer hardware or software or systems files not provided by Licensor; (d) accident of Licensee; (e) neglect of Licensee; (f) modifications by Licensee; or (g) misuse of the Licensed Software by Licensee.

6.02 **Exclusion of Alternative Remedies; Damages**

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY SHALL LICENSOR BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, BUSINESS INTERRUPTIONS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER PERSONAL OR COMMERCIAL DAMAGES OR LOSSES ARISING FROM THE USE OR INABILITY TO USE THE LICENSED SOFTWARE (WHETHER OR NOT DUE TO ANY DEFECTS THEREIN). IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY DAMAGES EVEN IF LICENSOR SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE, OR LICENSOR WAS GROSSLY NEGLIGENT. IN NO EVENT SHALL LICENSOR'S LIABILITY EXCEED THE LICENSE FEES PAID BY LICENSEE FOR THE LICENSED PRODUCT.

SECTION 7: INDEMNITY

7.01 Mutual Indemnification

Except as otherwise set forth in this Agreement, each Party (the “**Indemnifying Party**”) will indemnify, defend, and hold the other party, its respective shareholders, officers, directors, administrators, managers, personnel, successors and assigns (each, an “**Indemnified Party**”) harmless from and against any and all damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, without limitation, reasonable attorneys' fees, that arise out of or relate to (a) the negligence, willful misconduct or fraud of the Indemnifying Party; (b) the breach of the Indemnifying Party’s confidentiality obligations; (c) the breach of the Indemnifying Party’s representations or warranty obligations under this Agreement; (d) the failure by the Indemnifying Party to comply with applicable laws, rules and regulations; and (e) any payments, compensation, damages, or other amounts, however characterized or determined, to a third party which the Indemnified Party has reimbursed or may be obligated to pay as a result of any of the foregoing or any other breach of this Agreement by the Indemnifying Party. The Indemnifying Party’s liability under this section shall be reduced proportionally to the extent that any act or omission of the other party, or its employees or agents contributed to such liability. For purposes of this section, the acts or omissions of a Party’s employees, consultants, subcontractors, agents and representatives shall be deemed the acts or omissions of that Party.

7.02 Indemnity of Right of Use

Licensor shall defend or settle, at its own expense, any claim made against Licensee that the Licensed Product, in whole or in part, infringes any United States patent, published patent application, copyright, trade secret, or other proprietary right, and Licensor shall indemnify and hold harmless Licensee against any final judgment, including an award of attorneys' fees, that may be awarded by a court against Licensee as a result of the foregoing; provided, however, Licensee shall (a) give Licensor notice of such claim within thirty (30) days of the date Licensee first knows or should know of the claim and (b) provide Licensor with reasonable cooperation and all information in Licensee's possession related to said claim. Licensor shall have sole control of the defense of such claims and all related settlement negotiations. Reasonable out of pocket expenses incurred by Licensee in providing assistance to Licensor in defense of such a claim shall be reimbursed by Licensor.

7.03 Remedy for Claimed Infringement

If a claim is made that the Licensed Product, or any portion thereof, infringes any United States patent, copyright, trade secret, or other proprietary right, Licensor, at its sole expense, shall either: (i) procure for Licensee the right to exercise the rights and licenses granted hereunder with respect to the Licensed Product; (ii) modify the Licensed Product to make it non infringing but continue to meet the Product Specifications; (iii) replace the Licensed Product with

equivalent but non infringing software of like functionality that meet the Product Specifications; or (iv) terminate this Agreement and refund the License Fees upon the return to Licensor of the Licensed Product ; provided, however, that the liability of Licensor pursuant to this clause shall be subject to the limitations set forth in this Agreement, and Licensor shall have no liability for any claim of infringement based on use of a superseded or altered Release of the Licensed Product if the infringement would have been avoided by the use of the most current, unaltered Release of the Licensed Product.

7.04 **Limitation of Licensor's Infringement Indemnity**

Licensor shall have no liability to Licensee or any assignee, transferee, or sublicensee of Licensee for any claim of infringement that is based upon (i) any combination of the Licensed Software with software not supplied by or authorized by Licensor if such claim would have been avoided but for such combination, or (ii) any modifications to the Licensed Software (other than Releases provided by Licensor or otherwise approved by Licensor).

7.05 **Indemnification Process**

If any claim is made by a third party in respect to which indemnity may be sought by Licensee pursuant to the provisions of this Section 7, Licensee shall promptly notify Licensor in writing, specifying the nature of the third-party actions and the total monetary amount or other relief sought therein. Licensee shall reasonably cooperate with Licensor at Licensor's expense in such action. Licensor shall undertake to conduct all the proceedings and negotiations in connection therewith, assuming full responsibility for the defense, and shall also undertake all other required steps or proceedings to settle or defend any such action, including the employment of counsel which shall be reasonably satisfactory to Licensee, and the payment of all expenses. Licensee shall have the right to employ its own expense separate counsel and participate in the defense. Licensor shall obtain Licensee's prior written consent to any settlement of an indemnified claim, and such consent shall not be unreasonably withheld.

SECTION 8: TERM AND TERMINATION

8.01 **Term**

The term of any license granted herein shall commence as of the Effective Date and shall continue as follows (the "**Term**"):

- (a) For an Annual License, the license granted shall expire three hundred sixty-five (365) days from the Effective Date.; and
- (b) For a Full License, the license granted shall be in effect for five (5) years, unless terminated pursuant to the terms of this Agreement.

8.02 **Termination by Licensor**

Licensor may terminate this Agreement and the license granted to Licensee as follows:

- (a) Pursuant to the terms set forth in section 2.07;
- (b) If Licensee transfers title to or possession of the Licensed Product without Licensor's prior written consent;
- (c) Licensee breaches any material obligation of Licensee under this Agreement and such breach is not cured within thirty (30) days of Licensee's receipt of written notice thereof from Licensor; or
- (d) Licensee becomes insolvent, or is adjudicated as bankrupt, or voluntarily seeks protection under any bankruptcy or insolvency law; or Licensee makes an assignment of its assets for the benefit of creditors or any arrangement with its creditors.

Licensee will not be entitled to a refund of any applicable license fee upon early termination of this Agreement by Licensor.

8.03 **Termination by Licensee**

Licensee may terminate this Agreement and the license granted to Licensee herein upon the occurrence of any of the following events:

- (a) Licensee may terminate this license at any time by destroying the Licensed Product together with all copies and merged portions in any form.

Licensee will not be entitled to a refund of any applicable license fee upon early termination of this Agreement by Licensee.

8.04 **Remedies Upon Termination**

Upon termination or expiration of this Agreement for any reason: (a) all licenses granted herein shall terminate upon any termination; (b) the Parties will return, or certify the destruction of, all materials provided by the other Party, including the Licensed Product and any copies thereof; and (c) Licensee shall pay all outstanding fees and amounts owed to Licensor as of the date of termination.

8.05 **Survival**

The provisions of this Agreement which by their sense and context should survive any termination or expiration of this Agreement, shall survive termination of this Agreement and shall remain binding on the Parties.

SECTION 9: CONFIDENTIALITY

9.01 Confidential Information Defined

As used in this Agreement, the term “**Confidential Information**” means all information, including, but not limited to, the trade secrets and know-how of the respective Parties, any information marked "Confidential" or "Proprietary", and in the case of Licensor, the Licensed Product; provided, however, Confidential Information shall not mean any information that:

- (a) is known to the receiving Party at the time of disclosure by the disclosing Party;
- (b) is developed independently by the receiving Party without use of the disclosing Party’s Confidential Information;
- (c) is within, or later falls within, the public domain without breach of this Agreement by the receiving Party;
- (d) is publicly disclosed with written approval of the disclosing Party; or
- (e) becomes lawfully known or available to the receiving Party without restriction from a source having the lawful right to disclose the information without breach of this Agreement by the receiving Party.

The receiving Party shall have the burden of proof as to establishing by competent evidence any of the exceptions set forth in Section (a) to (e) above.

9.02 Legally Compelled

In the event the receiving Party is legally requested or compelled in any form to disclose any of the disclosing Party’s Confidential Information, the receiving Party, unless prohibited by applicable law, shall provide the disclosing Party with prompt written notice of such request, so that the disclosing Party may seek a protective order or pursue other appropriate remedies to protect the confidentiality of its information. If such protective order or other remedy is not obtained, the receiving Party will furnish only that portion of the Confidential Information which the receiving Party, upon the opinion of its counsel, is legally required to furnish. The receiving Party will reasonably assist the disclosing Party in its efforts to obtain a protective order or other remedies to protect or limit the disclosure of the information subject to the request.

9.03 Strictest Confidence

Each Party acknowledges that in the performance of this Agreement a Party may receive Confidential Information from a disclosing Party and that, as between the Parties, such Confidential Information is the exclusive property of the disclosing Party. The receiving Party agrees to hold the Confidential Information of the disclosing party in strict confidence in accordance with the provisions of this Agreement.

9.04 **Return of Confidential Information**

Upon any termination, cancellation, or rescission of this Agreement, a receiving Party shall: (i) surrender and deliver all Confidential Information of the other Party, including all copies thereof; or (ii) destroy the Confidential Information and all copies thereof and provide satisfactory evidence of such destruction to the disclosing Party within one (1) month following termination.

SECTION 10: GENERAL

10.01 **Equitable Relief**

Each Party acknowledges and agrees that the failure to perform its duties under this Agreement may cause the other Party to suffer irreparable injury for which the injured Party may not have an adequate remedy available at law. Accordingly, the injured Party may seek to obtain injunctive or other equitable relief to prevent or curtail any breach of this Agreement, whether such breach is threatened or actual, without posting a bond or security, in addition to and without prejudice to such other rights and remedies that may be available under this Agreement or under any applicable law. Notwithstanding any other term or provision in this Agreement, either Party may seek injunctive relief in any court of competent jurisdiction.

10.02 **Relationship of the Parties**

Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the Parties. Neither Party shall have the right to obligate or bind the other Party in any manner to any third party.

10.03 **Assignment**

Licensee shall, directly or indirectly, by operation of law or otherwise, transfer or assign the Licensed Product or this Agreement, or transfer, assign or sublicense any rights granted hereunder, without having secured the prior written consent of Licensor. Any attempted assignment in violation of this clause shall be void.

10.04 **Notices**

All notices required under or regarding this Agreement will be in writing and will be considered given if delivered personally, mailed via registered or certified mail (return receipt requested and postage prepaid), given by facsimile (confirmed by certification of receipt), by e-mail if sent from the below mentioned email addresses, or sent by courier (confirmed by receipt) addressed to the following designated parties:

If to Licensor: JMS Analytics LLC
ATTN: Jason Michael Schilli

Email: _____

If to Licensee: To the address or email provided by Licensee during the online purchase of the Licensed Product.

10.05 **Export Controls**

Each Party to this Agreement acknowledges its obligations to control access to Technical Data (as defined by the U.S. Department of Commerce, Office of Export Administration) under the U.S. Export Control Laws and Regulations and agrees to adhere to such U.S. Export Control Laws and Regulations with regard to any Technical Data received under this Agreement.

10.06 **Compliance with Laws**

Each Party shall comply with all applicable state, federal and local laws, executive orders and regulations in the performance of its obligations under this Agreement.

10.07 **Headings**

The headings and captions appearing in this Agreement have been inserted for the purposes of convenience and ready reference only and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the provisions to which they appertain.

10.08 **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between them, whether written or oral, between them relating to the subject matter of this Agreement.

10.09 **Modification or Amendment**

No modification to, amendment of, or other change in this Agreement shall be binding on either Party unless it is in writing and signed by authorized representatives of both Parties.

10.10 **Waiver**

No waiver of any provision of this Agreement shall be effective unless made in writing and signed by the waiving Party, nor shall any such waiver, if made, constitute a waiver of any subsequent breach of the same or of any other provision of this Agreement.

10.11 **Force Majeure**

Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, except for the payment of money, if such failure or delay is on account of causes beyond its control, including labor disputes, civil commotion, war, fires, floods, inclement weather, governmental regulations or controls, casualty, government authority, pandemics, strikes, or acts of God, in which event the non-performing Party shall be excused from its obligations for the period of the delay and for a reasonable time thereafter. Each Party shall use reasonable efforts to notify the other Party of the occurrence of such an event within three (3) business days.

10.12 **Attorneys' Fees**

If any legal proceeding is brought for the enforcement of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provision of this Agreement or other dispute concerning this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees incurred in connection with such legal proceeding. The term "**prevailing party**" shall mean the party that is entitled to recover its costs in the proceeding under applicable law, or the party designated as such by the court.

10.13 **Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument.

10.14 **Authority to Contract**

Each Party hereto represents and warrants that (i) it has obtained all necessary approvals, consents and authorizations of third parties and governmental authorities, if applicable, to enter into this Agreement and to perform and carry out its obligations under this Agreement, (ii) the persons executing this Agreement on its behalf have express authority to do so, and, in so doing, to bind the Party thereto; (iii) the execution, delivery, and performance of this Agreement does not violate any provision of any bylaw, charter, regulation, or any other governing authority of the Party; and (iv) the execution, delivery and performance of this Agreement has been duly authorized by all necessary partnership or corporate action and this Agreement is a valid and binding obligation of such Party, enforceable in accordance with its terms.

10.15 **Jurisdiction and Venue**

Should any claim or controversy arise between the Parties under the terms of this Agreement or in furtherance of this Agreement, such claim or controversy shall be resolved only in the state or federal courts of Minnesota, and said state and federal courts for the State of Minnesota, shall be the only appropriate

jurisdiction and venue therefore. Licensee hereby submits to said jurisdiction and venue.

10.16 **Governing Law**

This Agreement shall be construed in accordance with and governed by the substantive laws of the State of Minnesota. The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

10.17 **Class Action Waiver**

Licensee agrees not to bring or participate in a class or representative action, private attorney general action, or collective arbitration related to the Licensed Product or this Agreement. Licensee also agrees not to seek to combine any action or arbitration related to the Licensed Product or this Agreement with any other action or arbitration without the consent of all Parties to this Agreement and all other actions or arbitrations.

10.18 **Severability**

If any provision of this Agreement is held invalid or unenforceable under any applicable law, such invalidity or unenforceability will not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, and this Agreement shall be construed as if said invalid or unenforceable provision had not been contained herein.

10.19 **Remedies Cumulative**

The rights and remedies of Licensor and Licensee under this Agreement shall be cumulative and in addition to all other rights and remedies available at law and in equity.

10.20 **Liability Waiver**

- (a) Licensee acknowledges that the use of the Licensed Software, which collects and analyzes setup, track, and race day information for Quarter Midget races, may involve certain risks, including but not limited to, the risk of physical injury, both serious and minor, to Licensee and others. Licensee assumes full responsibility for any risks, injuries, or damages, known or unknown, which might arise from the use of the Licensed Software.
- (b) To the fullest extent permitted by law, Licensee hereby expressly waives and releases any and all claims, now known or hereafter known, against the Licensor, its officers, directors, employees, agents, affiliates, shareholders, successors, and assigns, on account of injury, death, or property damage arising out of or attributable to the Licensee's use of the Licensed Software.

- (c) Licensor provides the Licensed Software for the purpose of assisting in optimizing Quarter Midget race setups under various conditions. However, Licensor makes no representation, warranty, or guarantee as to the safety, accuracy, or effectiveness of the data provided by the Licensed Software. Licensee acknowledges that the implementation of any suggestions or recommendations made by the Licensed Software does not ensure safety or reduced risk of injury.
- (d) Licensee acknowledges that decisions made based on data or suggestions provided by the Licensed Software are the sole responsibility of Licensee. Licensee agrees that Licensor is not responsible for any decisions or actions taken by Licensee or any third party in reliance on the Licensed Software.
- (e) Licensee acknowledges that after the end of the Licensed Software's life as specified in Section 4.01(a)(ii), the Licensed Software may cease to function due to the termination of necessary cloud services, and Licensor shall not be liable for any loss or damage arising from such cessation of functionality.
- (f) Licensee acknowledges that they have carefully read this waiver and release and fully understand that it is a release of liability. Licensee is waiving any right that they might have to bring a legal action to assert a claim.

10.21 Read and Understood

Licensee has carefully read all this Agreement and agrees that all the terms set forth are fair and reasonable.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement:

LICENSEE:

By: _____
 Name: _____
 Title: _____
 Date: ___ / ___ / 2024

LICENSOR:

By: _____
 Name: Jason Michael Schilli
 Title: President
 Date: ___ / ___ / 2024